



Sen. William R. Haine

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09600SB1066sam001

LRB096 07137 AJ0 23984 a

1 AMENDMENT TO SENATE BILL 1066

2 AMENDMENT NO. _____. Amend Senate Bill 1066 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Trusts and Trustees Act is amended by
5 adding Section 5.4 as follows:

6 (760 ILCS 5/5.4 new)

7 Sec. 5.4. Spendthrift trusts.

8 (a) For trusts created on or after the effective date of
9 this amendatory Act of the 96th General Assembly, a settlor who
10 in writing irrevocably transfers property in any manner to a
11 trust having at least one trustee as defined in subsection (b)
12 of this Section may, subject to the limitations in subsection
13 (c) of this Section, provide that the income or principal
14 interest of the settlor as beneficiary may not be either
15 voluntarily or involuntarily transferred before payment or
16 delivery to the settlor as beneficiary by the trustee. This

1 Section shall be considered to be a restriction on the transfer
2 of the settlor's beneficial interest in the trust that is
3 enforceable under applicable nonbankruptcy law within the
4 meaning of Section 541(c)(2) of the Bankruptcy Code or any
5 successor provision.

6 (b) If the settlor is a beneficiary of the trust, at least
7 one trustee of a trust described in this Section must be a
8 corporate fiduciary who:

9 (1) is authorized by the laws of this State to act as a
10 trustee and whose activities are subject to supervision by
11 the Director of the Division of Banking of this State, the
12 Office of the Comptroller of the Currency, or the Office of
13 Thrift Supervision, or any successor thereto; and

14 (2) maintains or arranges for custody in this State of
15 some or all of the property that is the subject of the
16 trust described in this Section, maintains records for the
17 trust on an exclusive or nonexclusive basis, prepares or
18 arranges for the preparation of fiduciary income tax
19 returns for the trust, or otherwise materially
20 participates in the administration of the trust.

21 (c)(1) Except as provided in this subsection, if a trust
22 has a restriction as provided in subsection (a) of this
23 Section, a creditor or other claimant of the settlor may not
24 satisfy a claim, or liability on a claim, in either law or
25 equity, out of the settlor's transfer or the settlor's
26 beneficial interest in the trust. For purposes of this Section,

1 a creditor includes one holding or seeking to enforce a
2 judgment entered by a court or other body having adjudicative
3 authority as well as one with a right to payment, whether or
4 not reduced to judgment, liquidated, unliquidated, fixed,
5 contingent, matured, unmatured, disputed, undisputed, legal,
6 equitable, secured, or unsecured.

7 (2) A trust described in this Section does not prevent a
8 creditor or person described in this subsection (c) from
9 satisfying a claim or liability out of the settlor's beneficial
10 interest in or transfer into trust if:

11 (A) the claim is a judgment, order, decree, or other
12 legally enforceable decision or ruling resulting from a
13 judicial, arbitration, mediation, or administrative
14 proceeding commenced prior to or within 3 years after the
15 trust is created;

16 (B) the settlor's transfer into trust is made with
17 actual intent to hinder, delay, or defraud that creditor or
18 claimant;

19 (C) the trust provides that the settlor may revoke or
20 terminate all or part of the trust;

21 (D) the claim is for a payment owed by the settlor
22 under a child support judgment or order;

23 (E) the claim is by a spouse or former spouse of the
24 settlor on account of an agreement or court order for the
25 payment of support or maintenance or for a division or
26 distribution of property;

1 (F) the claim is a tax or other amount owed by the
2 settlor to any governmental entity;

3 (G) the claim is by a governmental entity for recovery
4 of public assistance received by the settlor from the
5 governmental entity;

6 (H) the transfer is made when the settlor is insolvent
7 or the transfer renders the settlor insolvent;

8 (I) the claim is a judgment, award, order, sentence,
9 fine, penalty, or other determination of liability of the
10 settlor for conduct of the settlor constituting fraud,
11 intentional infliction of harm, or a crime; or

12 (J) the settlor transferred assets into the trust that:
13 (i) were listed in a written representation of the
14 settlor's assets given to a claimant to induce the claimant
15 to enter into a transaction or agreement with the settlor;
16 or (ii) were transferred from the settlor's control in
17 breach of any written agreement, covenant, or security
18 interest between the settlor and the claimant.

19 (d) The statute of limitations for actions to satisfy a
20 claim or liability out of the settlor's beneficial interest in
21 or transfer into trust under this Section is the statute of
22 limitations applicable to the underlying action.

23 (e) The satisfaction of a claim under this Section is
24 limited to that part of the trust or transfer to which it
25 applies.

26 (f) For purposes of this Section, a trust is not revoked or

1 terminated by:

2 (1) a power to veto a distribution from the trust;

3 (2) a testamentary special power of appointment or
4 similar power;

5 (3) the right to receive a distribution of income,
6 principal, or both in the discretion of another, including
7 a trustee other than the settlor;

8 (4) an interest in a charitable remainder unitrust or
9 charitable remainder annuity trust as defined in Internal
10 Revenue Code Section 664 or any successor provision;

11 (5) a right to receive principal subject to an
12 ascertainable standard set forth in the trust; or

13 (6) the power to appoint a nonsubordinate adviser or
14 trust protector who can remove and appoint trustees, who
15 can direct, consent to, or disapprove distributions, or who
16 is an investment adviser or has the power to appoint an
17 investment adviser or investment director pursuant to the
18 laws of this State.

19 (g) The courts of this State shall have exclusive
20 jurisdiction over any action brought under this Section."